

Remarks

Reconsideration and withdrawal of the objections and rejections of the claims, in view of the amendments and remarks herein, is respectfully requested. Claims 1, 8-9, 15, 19, and 23 are amended, and claims 44-49 are added. The amendments are intended to advance the application and are not intended to concede to the correctness of the Examiner's position or to prejudice the prosecution of the claims prior to amendment, which claims are in a continuation of the present application. Claims 1-49 are pending.

Support for the amendments to claims 1 and 8-9, and new claims 44-49, is found, for instance, at page 13, lines 19-25, page 19, lines 24-28, and page 20, lines 3-5 and 20-22 of the specification.

The objections to claims 15, 19 and 23 are moot in view of the amendments to those claims.

The 35 U.S.C. § 112 Rejections

The Examiner rejected claims 1, 8-9, 15-19, 23, and 25 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. This rejection, as it may be maintained with respect to the pending claims, is respectfully traversed.

The Examiner is respectfully reminded that Applicant need not teach what is well known to the art. *vanA* sequences, including *vanA*-specific probes and primers, were well known to the art, as were amplification and hybridization assays to detect those sequences (see Petrich et al., Mol. Cell Probes, 13:275 (1999)) and U.S. Patent No. 6,274,316; both of record).

Moreover, Applicant's specification clearly identifies the nucleotide sequence corresponding to nucleotides 870 to 896, 851 to 868 and 898 to 917 of *vanA* (see Figure 1 and SEQ ID NOs. 2-4). Further, the probe recited in claim 1 hybridizes to *vanA* sequences in amplified *vanA* nucleic acid, is capable of hybridizing to SEQ ID NO:3 or its complement, is of a particular length and has sequences with a certain percent identity to SEQ ID NO:3 or its complement. Accordingly, the recited *vanA*-specific probes have a common structure and function.

The Examiner also rejected claim 8 under § 112(1) as containing new matter. This rejection is respectfully traversed. The Examiner is requested to consider pages 9 and 13 of the

specification, where lengths and sequence variations for the oligonucleotides of the invention are disclosed.

Therefore, withdrawal of the 35 U.S.C. § 112(1) "written description" rejections is respectfully requested.

The Examiner also rejected claims 1, 8-9, 15-19, 23, and 25 under 35 U.S.C. § 112, second paragraph, asserting that the claims are indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Examiner asserts that the phrases "substantially corresponding to," "corresponding to" and "high stringency hybridization conditions" are indefinite. The specification exemplifies at page 13, lines 16-30 probes or primers that substantially correspond to a reference sequence, e.g., those with at least 80% identity to a reference sequence, and exemplifies at pages 24-25 hybridization conditions. Nevertheless, to advance the application, claim 1 is amended to obviate the § 112(2) rejections.

Hence, withdrawal of the 35 U.S.C. § 112(2) rejections is respectfully requested.

The 35 U.S.C. § 102(b) Rejections

The Examiner rejected claims 1, 15-18, 23, and 25 under 35 U.S.C. § 102(b) as being anticipated by Petrich et al. (Mol. Cell Probes, 13:275 (1999)). The Examiner also rejected claims 1, 8-9, 15-19, 23, and 25 under 35 U.S.C. § 102(b) as being anticipated by Modrusan (U.S. Patent No. 6,274,316). These rejections, as they may be maintained with respect to the pending claims, are respectfully traversed.

Petrich et al. disclose 3 *vanA* specific sequences: primer *vanA1*, which has sequences corresponding to nucleotides 738-757 in the *vanA* sequence in NCBI Accession No. X56895, primer *vanA2*, which has sequences corresponding to nucleotides 1267-1285 in the *vanA* sequence in NCBI Accession No. X56895, and probe *vanA3*, which has sequences corresponding to nucleotides 941 to 957 in the *vanA* sequence in NCBI Accession No. X56895.

For the Examiner's convenience, the position of the *vanA* primers and probe disclosed in Petrich et al. relative to GenBank Accession No. X56895 is enclosed herewith (circled and starred). The position of Applicant's SEQ ID NOs:2-4 is shown as circled only.

The *vanA*-specific oligonucleotides in Petrich et al. do not include SEQ ID NO:3 or sequences with 80% identity thereto, or the complement thereof, that are capable of hybridizing to SEQ ID NO:3 or its complement.

Modrusan disclose 7 *vanA* specific sequences: *vanA*811L-27 (column 12, lines 5-7) and *vanA*811L-27T (column 12, lines 8-10), each of which has sequences corresponding to nucleotides 811 to 837 of X56895; *vanA*813L-25 and *vanA*812L-25 (column 12, lines 37-42), each of which has sequences corresponding to nucleotides 813 to 837 of X56895; *vanA*1117-21 and *vanA*1121-17 (column 12, lines 43-44), each of which has sequences corresponding to nucleotides 1117 to 1137 of X56895; and *vanA*1005-22 (column 13, lines 26-27), which has sequences corresponding to nucleotides 1005 to 1026 of X56895.

For the Examiner's convenience, the position of the *vanA* primers and probe discussed above in Modrusan is enclosed herewith (marked in black).

The *vanA*-specific oligonucleotides in Modrusan do not include SEQ ID NO:3 or sequences with 80% identity thereto, or the complement thereof, that are capable of hybridizing to SEQ ID NO:3 or its complement.

Accordingly, withdrawal of the 35 U.S.C. § 102(b) rejections is appropriate and respectfully requested.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6959 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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This paper or fee is being filed on the date indicated above using the USPTO's electronic filing system EFS-Web, and is addressed to: The Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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